Department of Legislative Services

Maryland General Assembly
2005 Session

FISCAL AND POLICY NOTE

House Bill 1212 (Delegate Barve, *et al.*)
Judiciary

Courts - Medical Injury Claims - Damages

This bill alters the calculation of damages and requires periodic payments of future and noneconomic damages. The bill provides enhanced immunity from civil liability for specified emergency health care providers. The bill also establishes a Task Force on Administrative Compensation for Patient Injury Claims, which is required to report its findings by June 30, 2007. The provisions establishing the task force terminate June 30, 2007.

The bill takes effect June 1, 2005 and does not apply to a cause of action arising before June 1, 2005.

Fiscal Summary

State Effect: The task force could be staffed with existing budgeted resources. The bill's remaining provisions would not materially affect governmental operations or finances.

Local Effect: None.

Small Business Effect: None.

Analysis

Bill Summary: For a cause of action arising on or after June 1, 2005, on a motion by a party, damages for past medical expenses in a verdict must be reduced on the ground that the claimant will be paid, reimbursed, or indemnified as specified under the bill. The court must hold a hearing and receive evidence on such a motion.

An award or verdict for past or future loss of earnings must exclude any amount for the proper amount of income taxes or payroll taxes, determined at the tax rates in effect for the plaintiff at the time the award or verdict is entered.

There is a rebuttable presumption that a verdict for future medical expenses must be based solely on Medicare reimbursement rates in effect on the date of the verdict for the locality in which the care is to be provided. A verdict for future medical expenses for hospital services must be based solely on rates approved by the Health Services Cost Review Commission, if the federal Medicare waiver is still in effect. A verdict for future medical expenses for nursing facility services must be based solely on the statewide average payment rate for the Medicaid program in effect on the date of the verdict. A verdict for future medical expenses for which there is no specified rate must be based on actual cost on the date of the verdict. All verdicts for future medical expenses are adjusted for inflation based on the average rate of inflation for the five immediately preceding years.

For a claim arising on or after June 1, 2005, if future economic and noneconomic damages exceed $250,000, an arbitration panel or court must: (1) order payment of $100,000 of these damages as a lump sum with past economic damages; (2) order the defendant to pay future economic damages and noneconomic damages of more than $100,000 periodically to the claimant or plaintiff in the form of an annuity; and (3) enter as the amount of the award or verdict for these damages, the purchase price of an annuity purchased by the defendant or the defendant's insurer.

The defendant or the defendant's insurer must purchase an annuity that purchases periodic payments for future medical expenses, noneconomic damages, and future loss of earnings as specified under the bill.

For a survival or wrongful death action, nonecnomic damages are paid as part of the lump sum containing past economic damages. The periodic payment requirements apply only to future economic damages exceeding $250,000.

Annuities under the bill must meet specified funding and rating requirements. The purchase of an annuity satisfies the portion of the award or verdict for future economic damages and noneconomic damages that exceeds $100,000.

An individual is not civilly liable for any act or omission in providing assistance or medical aid to a victim in a medical facility, if: (1) the victim initially visited the emergency department of the facility requesting examination or treatment for an emergency medical condition; (2) the individual is a health care provider; (3) the act or omission is not one of gross negligence; (4) the timing and type of diagnosis and

treatment are not affected by financial considerations; and (5) the individual is acting in full compliance with the federal Emergency Medical Treatment and Active Labor Act (EMTALA) and the regulations adopted under the Act.

The task force is required to: (1) study the feasibility of developing a statewide administrative compensation system; (2) compare the cost of compensating medical injuries through the existing tort system with compensation through an administrative system; (3) investigate the issues critical to designing such a system; (4) study other administrative compensation systems; and (5) study the feasibility of developing a pilot program.

Current Law: In a health care malpractice action, past medical expenses are limited to the total amount paid plus the total amount incurred but not paid, if the plaintiff or another person on the plaintiff's behalf is obligated.

An award for past and future earnings is not discounted for taxes that would have been paid.

Generally, economic damages include loss of earnings and medical expenses. These damages may be reduced by an arbitration panel, on application of a party. The application may include a request that damages be reduced to the extent that the claimant has been or will be paid, reimbursed, or indemnified for some or all of the damages assessed. If a defendant objects to the damages amounts as excessive after a trial, the court must hold a hearing. If the court finds that the damages are excessive, the court may then grant a new trial on damages or, if the plaintiff agrees, grant a remittitur.

A court or health claims arbitration panel may order that all or part of the future economic damages be paid in the form of an annuity or other financial instrument, or that they be paid in periodic or other payments, consistent with the plaintiff's needs, funded by the defendant or the defendant's insurer. If the plaintiff dies before the final periodic payment, the unpaid balance of the award for future loss of earnings reverts to the plaintiff's estate, and the unpaid balance for future medical expenses reverts to the defendant or the defendant's insurer.

Background: EMTALA requires a hospital that receives Medicare funds to treat an individual who comes to the hospital with an emergency medical condition regardless of the ability to pay. If a hospital is capable of providing the necessary emergency care to a patient and an emergency medical condition is found to exist, the hospital is prohibited from refusing to provide treatment to the individual or from transferring the patient to another medical facility without good cause.

Additional Information

Prior Introductions: Bills containing a requirement for periodic payments, SB 193 and HB 287, were introduced during the 2004 session. SB 193 received an unfavorable report from the Senate Judicial Proceedings Committee, and HB 287 received an unfavorable report from the House Judiciary Committee.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Workers' Compensation Commission, Maryland Health Claims Alternative Dispute Resolution Office, Department of Health and Mental Hygiene, Maryland Insurance Administration, Office of the Attorney General, Department of Legislative Services

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